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FEB 21 1901
JAMES H. MCKENNEY, CLERK

SUPREME COURT OF THE UNITED STATES.

No. 275.

JOSEPH GOLDING, Master, etc., of the Schooner Ellen Holgate,

Appellant,

vs.

THE STEAMSHIP ILLINOIS, John W. Shackford, Master, The American Steamship Company,

Claimant.

BRIEF FOR APPELLANT.

J. WARREN COULSTON,
Counsel for Appellant.

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Times Printing House, 725 Chestnut Street,
Legal Emporium of Philadelphia.

IN THE

SUPREME COURT OF THE UNITED STATES.

NO. 275.

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Appellant,

vs.

THE STEAMSHIP ILLINOIS, John W. Shackford, Master, THE AMERICAN STEAMSHIP COMPANY,

Claimant.

APPEAL FROM CIRCUIT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

This is an appeal from a decree of the Circuit Court of the United States for the Eastern District of Pennsylvania, in admiralty, in a cause of collision, and the following facts as found by the Circuit Court, are submitted as a statement of the case.

On the 13th of March, 1875, the steamship Illinois, a large vessel, about 360 feet in length, and of about 3,000 tons register, was coming up the Delaware Bay, at a speed of about ten knots an hour, and had rounded Dan Baker's shoal with the port-wheel, and had "straightened up" in about mid-channel. She was preceded by the schooner Ellen Holgate, a little on the port bow of the steamer, bound to New Castle, Delaware.

The wind was from the northeastward; the schooner was by the wind heading about north by west, or north-northwest, and "pointing" for Reedy Island piers.

The vessels were moving upon slightly diverging lines, which were about one hundred yards apart.

The western or Reedy Island side of the bay was obstructed by ice, while the eastern side was free from such obstruction.

When the vessels were probably three or four hundred yards apart, the schooner went into stays; and then tacked to the eastward to avoid the ice, which was ahead of and close under the port bow.

There was no lookout astern on the schooner; and, until after she had changed her course, no one on board of her observed the steamer.

On the steamer there was a sufficient lookout; the master and pilot were on the bridge looking ahead, and saw the schooner sometime before she tacked, and so directed the steamer's course, that she would pass the schooner on the latter's starboard side and some three hundred feet away from her, if she had kept on her original course.

As soon as the manœuvre of the schooner was observed on the steamer, orders were given to put her helm hard-a-starboard, to stop her engine, then to back at full speed and let go the anchor, with a view to pass under the schooner's stern. But these orders were ineffectual to prevent the collision, the steamer striking the schooner just abaft the main rigging, causing her to sink and capsize.

ASSIGNMENT OF ERRORS.

1. The court erred in not deciding under the facts of this case, that the steamship Illinois, on account of her great length and large tonnage, was proceeding at too high a rate of speed, in approaching the schooner, which was taking a course towards the western, or Reedy Island side of the Bay, which was obstructed by ice.

2. The court erred in its opinion in stating that "the steamship had a right to assume that the schooner would

keep her course, or at least would not attempt to change it when the vessels were in such close proximity to each other as to create a peril, which would not otherwise exist."

3. The court having found as a fact, that when the vessels were probably three or four hundred yards apart the schooner went into stays, and then tacked to the eastward, to avoid the ice which was ahead of and close under the port bow, erred in deciding that the vessels were in such close proximity to each other as to create a peril, which could not otherwise exist.

4. The court erred in deciding under the facts of this case, that, "a steamer is not called upon to act, except when she is approaching a vessel in such direction as to involve risk of collision, and that she is required to take no precautions, when there is no apparent danger."

5. The court erred in deciding that the steamer Illinois, as to the collision in the moment of peril, did all that could be done to avert it, or to mitigate its consequences.

6. The court erred in deciding as follows: "It is difficult to determine how near the schooner was to the field of ice, when she tacked; none of the witnesses who were on board of her state the distance. That a change in her course was necessary to avoid it, is undoubted, but whether she was in such close proximity to it as to make such change imperative at the time when it was made, does not satisfactorily appear from the libellant's proof."

7. The court erred in deciding, under the facts of this case that it was fairly inferable from the proofs that no necessity for the schooner going about existed and that negligence was not predicable of the steamer's failure to anticipate the schooner's variation.

8. The court erred in deciding under the facts of this case that it is undeniable that when the schooner was about to change her course she was bound to look out astern so as to avoid peril to herself or others if the surrounding circumstances might induce an apprehension of it and . . : that she would not have executed such a movement if she had observed the steamer when she resolved upon it, and

that it would have been apparent to her as it was to all others who were in the vicinity at the time, that to tack then was either to recklessly invite a collision or to increase the immediate danger of it.

9. The court erred in deciding that under the facts of this case it was the duty of the schooner to have tacked before she did or to have held her luff or course longer.

10. The court erred in deciding that the schooner put herself in the way of the steamer at a time when the latter could not avoid her and thus rendered the collision inevitable.

11. The court erred in deciding that the steamer had a sufficient look-out.

12. The court erred in dismissing the libels.

BRIEF OF ARGUMENT.

FIRST POINT.

It was the duty of the steamship Illinois to have slackened her speed as she approached the schooner Ellen Holgate.

The Circuit Court has found as a fact that the steamship Illinois, a large vessel about 360 feet in length and about 3,000 tons register, was coming up the Delaware Bay at a speed of about ten knots an hour, and had rounded Dan Baker shoal with the port wheel and had straightened up in about mid-channel . . . preceded by the schooner Ellen Holgate, a little on the port bow of the steamer . . .; that the wind was from the northeastward; the schooner was by the wind heading about north by west or north-northwest and pointing for Reedy Island piers; that the vessels were moving upon slightly diverging lines which were about one hundred yards apart; *that the western or Reedy Island side of the bay was obstructed by ice while the eastern side was free from such obstructions.*

From these facts it is apparent, the schooner sailing by the wind and the steamer going at ten knots, that the steamer was fast overtaking the schooner.

It was the duty of the steamer knowing as she did that the schooner was pointing for Reedy Island piers, *and that that side of the bay was obstructed by ice*, to slacken her speed because the steamer knew, or should have known, that the schooner, as soon as she approached the ice near enough, must go about.

The steamer knowing that the schooner must go about on account of the ice what right had the steamer to allow herself at the rate of ten knots an hour to get as close to the schooner as three or four hundred yards when the schooner went about?

All the facts above stated are found by the Circuit Court, and applying to them the well settled rules of law and navigation, the steamer is to blame for this collision.

Rule 20 provides that if two vessels one of which is a sail vessel and the other a steam vessel are proceeding in such direction as to involve the risk of collision the steam vessel shall keep out of the way of the sail vessel.

Rule 21 provides that a steamer approaching another ship so as to involve risk of collision, shall slacken her speed, or if necessary stop and reverse.

Rule 22. Every vessel overtaking any other vessel shall keep out of the way of the last mentioned vessel.

It is true that Rule 23 requires that where one of two vessels is to keep out of the way, the other shall keep her course subject to the qualification contained in Rule 24, which provides that, in obeying and construing these rules, due regard must be had to all the *dangers of navigation*, and to any *special circumstances* which may exist in any particular case rendering a departure from them necessary, in order to avoid immediate danger. *Revised Statutes, Sec.* 4233, *page* 818.

It is submitted that there is nothing under the facts of this case, as found by the court, which can properly justify the steamer Illinois in approaching the schooner that was pointing as she was compelled to do sailing by the wind, towards a field of ice, under such a rate of speed, so that when the necessity, which should have been foreseen by the

steamer, of stopping and reversing arose, the latter should only be three or four hundred yards distant.

In this instance, affirmative evidence of danger from the ice was presented to the steamer, and the channel was narrowed by this obstruction which prevented the schooner from running out her tack further to the westward, and it is the case of a steamer approaching a vessel which he knows must soon change her course to avoid impending danger.

The John L. Hasbrouck, 3 *Otto*, 407, 408.

In considering this point, it is important to keep in mind the fact proven by Shackford, master of the steamship (*Record*, 26), that it takes to stop his ship going ten or eleven knots, inside of five minutes; and by Hand, chief engineer (*Record*, 30), that the steamer was backing full speed three minutes.

It also must be borne in mind, in considering this point, that the Circuit Court has found as a fact that the vessels were probably three or four hundred yards apart when the schooner went into stays, up to which time the steamer was running at a speed of ten knots an hour, and it is a mathematical certainty that a steamer going at the rate of ten miles an hour, passes over a space of three hundred and forty yards per minute. It therefore incontestably appears as a startling fact that the steamer going at ten knots an hour, had allowed herself to get in such proximity to the schooner, which, on account of the heavy ice, had reached the furthest limit of her tack, and of necessity went about to avoid imminent danger from it, that it was impossible for her to stop in time to avoid a collision.

The Falcon, 19 *Wallace*, 77.
The Lucille, 15 *Wallace*, 679.

SECOND POINT.

The schooner was compelled to change and was justified in changing her course when and as she did in order to avoid the imminent danger from the ice which was directly under her bow when she went about, and the steamer is responsible for this collision in not taking timely precaution under the circumstances to avoid the collision.

The Circuit Court has found as a fact that "when the vessels were probably three or four hundred yards apart the schooner went into stays *and then tacked to the eastward to avoid the ice which was ahead of and close under the port bow.*"

Having this important fact found in our favor let us see why it is that the Circuit Court reversed the District Court upon this the question in the cause.

The learned Circuit Judge fairly states the law that it is the duty of a vessel overtaking another to keep clear of the vessel ahead and how especially imperative this rule is upon a steamer which has the control of her own motive power and that it is her duty to carefully observe the course and conditions of a vessel in advance of her, and in view of these adapt her own rate of speed and line of movement to the avoidance of danger of collision with such vessel. The learned judge also lays down the proposition that the preceding vessel is bound to keep her course except "*under the pressure of an imminent greater peril.*"

The Circuit Court fell into error in adapting the case of *The Scotia*, 14 *Wallace*, 170, to the facts of this case, and in overlooking most important testimony in the cause.

The case of the Scotia *supra*, was the case of an ocean steamer sailing at night and where she had no guide as to approaching vessels, except their lights. It was also the case of two vessels *in an open sea*, and where the Scotia as to her own lights had complied with the law, and the case rightfully decided, that the course of the sailing vessel when first seen was such by the light she exhibited, that compared with the steamer's, no collision was possible and therefore the steamer was not bound to change her course. That all she was required to do was to watch and see that the courses of the two vessels were preserved, and that it was only when the sailing vessel changed her course so as to render a collision possible, that the steamer should change hers also and that if she then made the proper manœuvres to take herself from the sailing vessel by slowing, stopping and backing, she was blameless.

The case of the Scotia can have no bearing or application to this case, because the facts are dissimilar. The

steamer Illinois had a clear channel to the eastward, knew that the schooner Holgate was approaching a field of ice which fixed the absolute limit of her tack, and that she must of necessity soon go about and yet proceeded under a high rate of speed, and allowed herself to get within four hundred yards, saw the schooner go into stays, and then undertook to do an impossibility—to stop within a space which she would run in about one minute, when it was known that it would require from three to five minutes by backing at full speed to avoid the schooner.

The learned judge clearly overlooked important testimony. He says "it is difficult to determine how near the schooner was to the field of ice when she tacked; none of the witnesses who were on board of her state the distance." and, "*that a change in her course was necessary to avoid* it (the ice) *is undoubted*, but whether she was in such close proximity to it as to make such change imperative at the time it was made does not satisfactorily appear from the libellant's proofs."

In this the learned judge is clearly mistaken. Two disinterested witnesses not on board of the schooner give the most positive testimony upon this point.

DANIEL C. BOYER, a witness for the libellant, Record 32, testifies as follows:

Question.—Now can you tell why the schooner went about?

Answer.—The schooner went about—she went in as close to the ice as she could get and went about.

And in answer to another question he says, Record 32, "I dont think it (the ice) was over twenty-five yards from the schooner's bow when she went about.

It will appear from the testimony of this witness that he was upon his tug as her master and that when the schooner went about his tug was close to the schooner's stern, close enough to talk to the captain. Record 33.

This witness describes the character of the ice which had to be avoided and says (Record 34) on a question by the court.

Question.—How large was the largest?

Answer.—Some as wide as the river at that time; where the schooner went in there was plenty of ice; some pretty good sized cakes; enough to take her ashore—ten and twenty feet square; the tug-boat couldn't have gone through.

The other witness for the libellant whose testimony was overlooked by the Circuit Court, is William J. Minford, master of his tug, which was also right astern of the steamer, or a little to the leeward of her. He plainly saw the schooner go in stays. He says as to the ice (*Record*, 39):

Question.—Why did the schooner go about?

Answer.—I suppose the schooner went about for the ice; he could not fetch his course in further for the ice, owing to the way the wind was.

Q. How far was the ice from the schooner's bow at the time she went about?

A. It looked to be quite close under the schooner's lee bow, or ahead of her.

Q. How wide was this ice from where the schooner went about, over to a line with Reedy Island?

A. I judge it occupied the whole inside channel, and was coming down outside of the island; I mean floating ice.

Q. Was this ice that she went about for, a large field, or broken ice?

A. I can't tell, but the river was full of large and small ice.

Q. From the line where the schooner went about, was the ice occupying the river from that line over to Reedy Island piers?

A. Yes, sir; all that shore was occupied.

Q. How far was it across this ice, as near as you could tell?

A. I can't tell that; I can tell on the chart; it occupied outside of Reedy Island some considerable distance, on the inside and outside.

Q. How broad was this field of ice—a quarter or half a mile?

A. It was more than that.

Q. I mean from the line of this chart?

(Chart shown witness.)

A. The river was full of ice from where the schooner went about, all the way over to the Delaware shore.

The learned judge admitting, as he does, that it is undoubted that a change in the course of the schooner was necessary to avoid the ice, which he finds as a fact, was ahead of, and close under, the port bow, it must be that he has overlooked the testimony of Boyer and Minford, above quoted, which, taken with the fact as found by the learned judge, that the ice was ahead of and close under the port bow, makes it satisfactorily appear, from the libellant's proofs, that the schooner was in close proximity to the ice, and that the change in her course was imperative

The Lucille, 15 *Wallace*, 676.
The Carroll, 8 *Wallace*, 302.
The Abbotsford, 8 *Otto*, 446.

The fact as found that the ice was close under the port bow, shows in itself that the schooner had run out her tack before she attempted to go about, and in this did what the law compels a vessel ahead to do—that is to run out her tack.

The D. S. Stetson, 4 *Benedict*, 508.

THIRD POINT.

The absence of a proper lookout on the steamship Illinois was one of the causes which led to the disaster for which the steamship is responsible.

It is true that the Circuit Court finds that on the steamer there was a sufficient lookout, the master and pilot were on the bridge looking ahead and saw the schooner some time before she tacked. . . .

It is submitted that an examination of the findings of fact will fail to disclose that at the time of the collision and for some time prior to it any lookout existed on the steamer other than that kept by the master and pilot on the bridge (Record 25), and this is what the Circuit Court meant by a sufficient lookout.

It is a significant fact too that the lookout if there was one forward on the steamer, was not called as a witness nor is his absence accounted for.

The decisions of this court maintain that steamers must keep constant and vigilant lookouts stationed in proper places and charged with the duty for which lookouts are required and that they must be actually employed in performing such duty. And they further hold that the forward part of a vessel where the view is unobstructed is the proper position for a lookout and is more favorable than an elevated position on the ship. The decisions of this court further establish that a master having charge of the navigation of the ship is not a competent lookout.

It is submitted, therefore, that as the findings of fact nowhere disclose the existence of a lookout on duty at a proper place forward on the steamer at the time of and prior to the collison, the fact found by the Circuit Court, that the master and pilot were on the bridge and were a sufficient lookout, does not avail the steamship, but rather the more establishes her negligent navigation and fully explains why the steamer did not see that the schooner must tack on account of the ice, and makes her liable for the collision by the omission of a duty absolutely required of her.

The Ottawa, 3 *Wallace*, 272, 273.

FOURTH POINT.

The Circuit Court erred in deciding that the steamer Illinois, as to the collision in the moment of peril, did all that could be done to avert it, or to mitigate its consequences.

The Circuit Court found, as a fact, that as soon as the manœuvre of the schooner was observed on the steamer, orders were given to put her helm hard a-starboard, to stop her engine, then to back at full speed and let go the anchor with a view to pass under the schooner's stern. But these orders were ineffectual to prevent the collision, the steamer striking the schooner just abaft the main rigging, causing her to sink and capsize.

We say that the opinion of the court based upon this finding, is erroneous and submit the following to sustain our views:

It is an invariable rule that during the interval in which a steamship that has been moving fast ahead through the water is stopping herself by her reversed screw, the rudder produces none of its usual effect to turn the ship, but that such effect as it does produce is to turn the ship in the reverse direction to that in which it would turn if the screw were driving ahead.

In this case the practical working of this rule is testified to by Sawyer, a witness for the steamship (Record 28, 29,) and see report of the assessors, Record 43, 44.

This being the rule and its operation being shown to be true by the steamship's testimony and fortified by the opinion of the nautical experts, who sat as assessor's in the District Court, it is submitted that it was negligence on the part of the steamship to have reversed her screw with a starboard wheel when the schooner was in stays. If to go astern was the proper manœuvre the wheel should have been put to port. To go astern with the wheel to starboard with a view to avoid a collision with a vessel passing to the starboard, and in close proximity, would be ineffectual as the manœuvre is one which would carry the ship in the direction of the object to be avoided.

We say therefore that at the very time when, through the negligence of the steamship she had overtaken and was proceeding at a high rate of speed in dangerous proximity to the schooner, the highest skill should have been exercised, there was a departure by those in charge of the steamer from a plain rule for steering the ship whose operation is well known and the overlooking of which is a *fault* that cannot be excused even in the face of impending danger.

By the testimony (Record 35) it appears the schooner passed some distance to starboard after getting out of stays and by the testimony also it appears that the steamship through ignorance or mis-application of the rule above stated was moving in the same direction and towards the

schooner, instead of being moved to port by a proper change of her wheel. (Record 28, 29.)

How then can it be said, in view of the above facts, that the steamer, having put herself in close and dangerous proximity to the schooner, availed herself of every rightful means to avoid the collision?

We say that under the conditions existing at the time the schooner went about, the steamship by this improper manœuvre precipitated the collision.

FIFTH POINT.

The schooner in no way permitted this collision.

She did not alter her course until to do so was absolutely necessary to avoid being carried ashore by the ice.

The Carroll, 8 *Wallace*, 302.

She was not bound to anticipate that a steamship with clear water at the eastern side of the bay and with plenty of channel-room would sail in such proximity to her and at such a rate of speed as to make a collision imminent when she tacked. On the contrary she had a right to expect, indeed to rely upon, the steamship to take a course far enough to starboard to make danger impossible.

She was not warned by signal from the steamship that there was the least danger in the conditions existing when she tacked. (Record 24.)

We say therefore that as she tacked to save immediate peril, and in no way permitted the collision by any negligence on her part she is blameless. We say, further, that the steamship recklessly pursued a course inviting disaster when she had a wide bay unobstructed to the starboard, and that when in dangerous proximity to the schooner she executed a manœuvre in palpable violation of a plain rule and precipitated the disaster.

SIXTH POINT.

While it is true that there was no lookout astern on the schooner, and, until after she had changed her course, no one on board of her observed the steamer, this omission did not in any way contribute to the collision, and is therefore immaterial.

It is well settled by this court that the usually obligatory rule of navigation, which requires a special lookout, does not apply to a case where the collision could not have been guarded against by a lookout, and where it is clear that the absence of a lookout had nothing to do in causing it.

The Farragut, 10 *Wallace*, 334.

The Fannie, 11 *Wallace*, 238.

The Pennsylvania, 19 *Wallace*, 125.

The Circuit Court has found, as a fact, that the schooner tacked to the eastward to avoid the ice, which was ahead of, and close under the port bow, and that a change in the course of the schooner was necessary to avoid the ice is undoubted.

How then, upon any view of the facts found by the court, can it be said that the absence of a lookout upon the stern of the schooner in any way contributed to the collision? And as we have already shown in the second point that the court overlooked important testimony in saying that it does not satisfactorily appear from the libellant's proof, whether the ice was in such close proximity as to make the change of the course of the schooner imperative, it must be evident that the absence of the lookout astern did not contribute to the collision.

The finding of the facts by the court, that the ice was close under the schooner's port bow, and that it is undoubted that a change in the schooner's course was necessary to avoid it, is consistent, and is strengthened by the testimony overlooked by the court, which, when properly considered, solves the only difficulty under which the Circuit Court labored, and makes it appear satisfactorily how close the ice was when the schooner tacked.

The learned judge found as a fact, that the western or Reedy Island side of the bay was obstructed by ice; and it is clear, from the testimony, that there was an unbroken line of heavy ice for a considerable distance, both above and below the place where the schooner went about. (Record 39.) It must have been apparent to the steamer, if she had had a proper lookout in the bow, and it must have been apparent to the master and pilot, who were on the bridge of the steamer following

close behind the schooner, that the schooner's course was carrying her to a point of heavy ice under her port-bow, which would render her going about as necessary as it she were approaching the western bank of the bay itself.

Keeping these undeniable facts in view, how is the steamer to rid herself from the charge that she allowed herself at full speed to get in dangerous proximity to a schooner which she knew of necessity must soon go about?

A steamer is bound to exercise the greatest care in approaching a sailing vessel, and under the facts of this case, her neglect of this duty was gross negligence.

It may be said in answer to this, that the Circuit Court in its opinion says that no immediate necessity of going about was observed by those in the duty of lookout on the steamer, and that it found as a fact, that there was a sufficient lookout on the steamer. What is a sufficient lookout is always a question of law, and the finding by the judge upon this point, that the master and pilot on the bridge were a *sufficient* lookout, contradicts, and is inconsistent with the decisions of this court, requiring the lookout to be stationed on the forward part of the deck of the vessel.

The Ottawa, 3 *Wallace*, 272, 273.

But it is not necessary to argue this point further for the reason, already shown, that it did not contribute to the collision. That under the circumstances of the case a lookout astern was not imperative, is ably shown in the opinion of the District Court, and of the assessors who reported their findings and sat with the judge, upon the argument of the cause, in the District Court. (Record 44, 45.)

SEVENTH POINT.

The Circuit Court erred in dismissing the libels.

The sole reasons for the decree of the Circuit Court, appear from the opinion to be, that the schooner had no lookout astern, and that she tacked at an improper time.

But it has been shown from the facts found by the Circuit Court and from the evidence, which was overlooked by the Circuit Court, that the schooner could keep her tack no longer, and being threatened by imminent peril from the ice, was obliged to change her course, when and as she did,

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Brief of Argument in behalf of the American Steamship Company, Claimants of the Steamship "Illinois," Appellees.

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The opinion of the learned judge of the Circuit Court (Record, page 47) contains all that can be said on the law applicable to the case of a vessel of superior speed passing another in a river.

It remains only for the counsel of appellees to furnish the authorities which show similar rulings applied to similar cases.

The following cases fully maintain the principle that a sailing-vessel having the right of way must not embarrass, by sudden and unexpected movements, a steamship or other vessel which is bound to avoid her.

The Free State, 1 Otto, page 200.

It is not the rule of law when a steamer is approaching another vessel, and where a collision may be produced by a departure of the latter from the rules of navigation that the former vessel is bound to slacken her speed, or stop and

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It is not the rule of law when a steamer is approaching another vessel, and where a collision may be produced by a departure of the latter from the rules of navigation that the former vessel is bound to slacken her speed, or stop and

reverse. Each vessel may assume that the other will *reasonably* perform its duty under the laws of navigation.

The Scotia, 14 Wallace, 170.

"Nor is a steamer called to act, except when she is approaching a vessel in such direction as to involve risk of collision."

The Mary Eveline, 16 Wallace, 348.

A sailing-vessel with the wind free not liable for a collision with a schooner beating—the schooner having tacked improperly in reference to the vessel having the wind free, and under circumstances under which the latter could not avoid the former.

The Leonidas Stuart's, (Lower Canada) Vice Adm'ty. Reports, page 229. 1 Pritchard's Adm. Dig., page 184, note. Where a ship ahead of another goes about without any preparatory indication by which the other can be warned in time, she is in fault.

The Grace Girdler, 7 Wallace, 196. A yacht ahead was run down by a schooner astern on the same tack. The yacht had suddenly luffed to avoid a ferry-boat; it was held that the schooner was not bound to anticipate such a contingency.

The Steam Propeller Nereus, 3 Benedict, 238. A steamer bound in the same direction as a schooner beating and ahead of the steamer. The schooner held to be in fault.

Per Blatchford, J. "It is clear she (the schooner) went about without having any heed to the Nereus."

"If she had sufficient steerage way on, upon her port tack, either to luff into the wind, or to let her sheets go and fall off, it was her duty to have attempted to do so. If she had not sufficient steerage way to do so, as is claimed by her master, it is because she came about negligently, without paying any attention to the Nereus."

The Propeller Amos C. Barstow, 8 Benedict, 401.

A schooner was held to be in fault for tacking at so short a distance from a steamer as to leave no room for the steamer to adopt a course to avoid the schooner after she tacked.

The excuse that the schooner had to go to her port tack from her starboard to avoid another schooner, held not to excuse her as regards the steamer, for such precaution ought to have been taken in proper time.

The same reason applies to the ice in this case. If it was necessary to tack on that account, she should have tacked earlier when the "Illinois" was far enough to allow her to do so with safety, or hold her luff.

The Newburg *vs.* The Oscar, Rule of the Road, page 231.

Steamer meeting schooner close-hauled, schooner held in fault for tacking in close proximity to steamer after she had taken her course to pass the schooner on another tack.

The John L. Hasbrouck, 8 Otto, 405, cited by appellant, is authority for the appellees. That a sailing-vessel has no right to take a course which forces a collision with a steamer taking the proper course.

These cases are all apposite, and in none was the course of the sailing-vessel as clearly without excuse as in the present case.

The "Illinois," a large ocean steamship, with a heavy draught of water, was compelled to keep to the channel. She had been in sight from the schooner, and was gradually overhauling her, for upwards of two hours of daylight. The two vessels were found by the court to be moving on slightly diverging lines which were about one hundred yards apart. The schooner was short-handed; there was no other officer besides the captain, who took the place of a seaman and steered his vessel, instead of performing the duty of an officer of the deck or watch. His attention was directed to the duty of steering, to the neglect of that of a deck officer, who would have observed the position of the steamship or other vessels before going about.

In consequence of this neglect, the master, in ignorance of the position of the steamship, changed his course and tacked ship in such a relative position to the steamship that the latter could not avoid the collision.

It is the vessel which *permits* the risk of a collision which is in fault. The Free State, 1 Otto, page 200. The Scotia, 14 Wallace.

It is not necessary to inquire whether the steps to avoid the consequences of the peril thus incurred by the schooner were as effectual as they might have been to avoid collision if time for deliberationhad been allowed. The steamship starboarded her helm to go under the schooner's stern, reversed at full speed, and threw a heavy anchor overboard to deaden the steamer's way.

That the steamer did all that could have been done "at the moment of peril," does not admit of a doubt. The assessors so report, Record, page 44. Even if it were otherwise, it would produce no effect on the decree in the case.

The finding of the court is that the fault of the schooner consisted in not having a lookout astern at the time she tacked. The expression "lookout astern" is perhaps too technical. It means to say that the want of an officer of the deck, whose attention was not engaged in steering, and who would have had a knowledge of the surroundings of his vessel before he adopted a course which would not have been taken if he had known of the position of the "Illinois," was a fault.

The libellant does not pretend that he would have tacked as and when he did, if he had observed the steamer. And the finding of the court is conclusive that "until after she had changed her course, no one on board the schooner observed the steamer."

The cases in this court cited by the counsel for the appellant have little bearing upon the present one. The Falcon, 19 Wallace, 76; The Lucille, 15 Wallace, 676, and The Carroll, 8 Wallace, 302, were each cases of steamers *meeting*, not passing, sailing-vessels which they were bound to avoid, and change of course of the sailing-vessels in each case was caused by the fault of the steamship.

The J. L. Hasbrouck, 8 Otto, 405, is authority for the appellees, and The Abbotsford, 8 Otto, 147, was the case of a steamship held in fault for taking a course between two schooners holding the same tack," when she should have gone outside them."

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The J. L. Hasbrouck, 8 Otto, 405, is authority for the appellees, and The Abbotsford, 8 Otto, 447, was the case of a steamship held in fault for taking a course between two schooners holding the same tack, "when she should have gone outside them."

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